

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
ALBANY DIVISION**

GREGORY LINSTON GILLILAN,

Plaintiff

v.

D. SCARBOROUGH,

Defendant

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1:05-CV-172 (WLS)

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**ORDER**

Before the Court is a Recommendation from United States Magistrate Judge Richard L. Hodge filed on January 11, 2007 (Doc. 18). It is recommended that Defendant's Motion for Summary Judgment be granted. (Doc. 8; *see also* Doc. 12 (converting Defendant's Motion to Dismiss into a Motion for Summary Judgment)). Plaintiff filed a timely objection on January 22, 2007. (Doc. 20).

The Magistrate Judge, in his Recommendation, notes that Plaintiff filed this action alleging that Defendant violated Plaintiff's First Amendment rights by censoring and denying Plaintiff access to the Court by allegedly interfering with his outgoing legal mail. (Doc. 18). It is further noted that Defendant moves for summary judgment, alleging that Plaintiff failed to properly exhaust this claim pursuant to the dictates of the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a). *Id.*

It was found that Defendant satisfied his initial burden to show that no material issue of fact existed as to whether Plaintiff fully exhausted all available administrative remedies. *Id.* Upon review, it was found that while portions of Plaintiff's exhibits may appear to rebut Defendant's showing that Plaintiff filed any type of grievance, Plaintiff failed to rebut the overall showing, as made by Defendant, that Plaintiff failed to fully exhaust his claims. *Id.* Notably, it was found that Plaintiff has the knowledge and ability to file a formal grievance; and that Plaintiff should have been aware that he had the choice of filing a formal grievance if he felt his informal grievance was not resolved. *Id.* It was also found that while Plaintiff appears to assert that certain prison officials at times refused to properly process grievance forms, he failed to

establish that he ever pursued the formal grievance process and/or pursued all avenues of available relief such that his remedies could be held to have been exhausted per the requirements of the PLRA. *Id.* Based on Plaintiff's failure to rebut Defendant's overall showing, it is recommended that Defendant's Motion for Summary Judgment (Doc. 18) be granted.

In his objection, Plaintiff maintains for the first time that he cannot be held liable for the prison officials' failure to provide proper grievance forms, denial of proper grievance procedures, and said officials' failure to process forms once submitted. (Doc. 20). Plaintiff further maintains, also for the first time in his objection, that upon the rejection of his informal grievance, prison staff did not provide him with proper formal grievance forms as he requested. *Id.* Upon further review, it is found that Plaintiff's objection does not consist of objections to the findings made in the Report and Recommendation, but rather of novel legal theories and arguments which were not before the Magistrate Judge when he issued the Recommendation. The Court notes that, when presented with Defendant's Motion for Summary Judgment (Doc. 8), Plaintiff had the affirmative duty to submit at that time any evidence, legal theories, and arguments which he felt could support his position. Furthermore, Plaintiff was given adequate notice of and was informed both of his rights and responsibilities with respect to Defendant's Motion. (Doc. 12). The Court therefore finds it improper to consider these new allegations when reviewing the Recommendation. Accordingly, Plaintiff's objections are **OVERRULED**.

Upon full review and consideration upon the record, the Court finds that said Recommendation (Doc. 18) should be, and hereby is, **ACCEPTED, ADOPTED** and made the Order of this Court for reason of the findings made and reasons stated therein, together with the findings made and conclusions reached herein. Accordingly, Defendant's Motion for Summary Judgment (Doc. 8) is **GRANTED**.

**SO ORDERED**, this 2<sup>nd</sup> day of February, 2007.

/s/W. Louis Sands  
**THE HONORABLE W. LOUIS SANDS,**  
**UNITED STATES DISTRICT JUDGE**